

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court **Middle District of Tennessee** on the following

☐ Trademarks or ☒ Patents. (☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 3:11-cv-1034	DATE FILED 10/28/2011	U.S. DISTRICT COURT Middle District of Tennessee
PLAINTIFF Vextec Corporation		DEFENDANT Sentient Corporation
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,006,947		See Attached Complaint
2 7,016,825		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Keith Throckmorton	(BY) DEPUTY CLERK Ann Frantz	DATE 11/3/2011
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

the extent unavailable to the general public (all of the foregoing collectively referred to as "Confidential Information"). Consultant agrees: (i) to use any Confidential Information disclosed to Consultant solely in the performance of his work as a consultant to the Company and not to disclose it to any person not authorized to receive it, to refrain from using Confidential Information for the advancement of any personal interests, including promotion of the interest of any future employer Consultant may have, and (ii) to comply with the policies and procedures of the Company regarding the safekeeping of Confidential Information.

(Exh. 4, para. 4 (a)).

25. The Sales Consultant Agreement also provides for attorneys fees and costs.

Specifically, Paragraph 11 (g) states:

g. Attorney Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

(Exh. 4, para. 11 (g)).

26. Mr. Thomas's consulting relationship with Vextec ended on May 1, 2008 through the execution of a Separation Agreement and Release of Claims, a true and correct copy of which is attached hereto as Exhibit 11 ("Thomas Separation Agmt."). This agreement specifically reminded Mr. Thomas of his continuing confidentiality obligations under the Sales Consultant Agreement. Specifically Paragraph 6 states:

6. Upon execution, Consultant shall return to the Company any and all Company documents, including, but not limited to, Confidential Information and Work Product (as defined in the Consulting Agreement) and return all Company keys and Company property. Consultant acknowledges that he has continuing obligations under the Consulting Agreement following termination of his services and that nothing in this Release Agreement waives, releases, or modifies those obligations, including without limitation Section 4 of the Consulting Agreement.

(Exh. 11, para 6).

II. Mr. Thomas's Involvement with Sentient, Sentient's Recruitment of the other Former Vextec Employees and Defendants' Use of Vextec's Trade Secrets and Patented Technology for Sentient's Benefit

27. Mr. Thomas left Vextec and became involved with Sentient. Mr. Thomas's relationship with Sentient began at least as early as July 2008 as evidenced by a July 8, 2008 email from Mr. Thomas to Mr. Line, a true and correct copy of which is attached hereto as Exhibit 12 ("July 8, 2008 Email"). Sentient's 2011 Annual Report Form, a true and correct copy of which is attached hereto as Exhibit 13, lists Mr. Thomas as Sentient's president. On information and belief, Mr. Thomas is also a shareholder of Sentient.

28. On and around 2008 Mr. Thomas induced Mr. Line, then a Vextec employee, to work against his Employer to the benefit of Sentient and other companies Mr. Thomas was affiliated with, including at least, Torii.² For example, on and around July 2008, Mr. Thomas was conspiring with Mr. Line, then a Vextec employee, to solicit business for Sentient for the same prognostics and fatigue management technology developed by Vextec. (*See* Exh. 12). Additionally, on and around August 2008, Mr. Thomas was working with Mr. Line to solicit business for Torii from Mesoscribe.³

29. Between 2009 and 2010, Sentient hired the other Former Vextec Employees away from Vextec.

30. On information and belief, on or about February 2009, Sentient hired Mr. Line away from Vextec to be Sentient's director of business development.

31. On or about February 2010, Sentient hired Mr. Pulikollu away from Vextec to be Sentient's technical lead scientist.

² Upon information and belief Torii is a consulting company founded by Mr. Thomas.

³ Mesoscribe is a technology company that has done business with Vextec.

32. On or about November 2010, Sentient hired Mr. King away from Vextec to be Sentient's manager of business development and product marketing.

33. On information and belief, Sentient obtained Vextec Trade Secrets and other confidential information from the Former Vextec Employees both before and after their employment at Sentient. In employing the Former Vextec Employees, and having them perform work that is substantially similar to that performed by these employees at Vextec, Sentient knows, or has reason to know, that it is using Vextec confidential information and Trade Secrets derived from the Former Vextec Employees, who owe a duty to Vextec to maintain the secrecy of Vextec Trade Secrets.

34. Sentient has used and is continuing to use Vextec's patented technology, Trade Secrets and other confidential information to compete with Vextec and obtain government SBIR/STTR grants and to pursue a variety of other commercial business opportunities.

35. Sentient's use of Vextec's patented technology has harmed and continues to harm Vextec. For example, in September 2010 both Vextec and Sentient submitted proposals to the Army SBIR program for "Fatigue Crack Initiation Prediction Tool for Rotorcraft Spiral Bevel Gears." On information and belief, Sentient proposed technology that infringes the '825 patent, which caused Vextec to lose this business opportunity to Sentient.

36. Sentient's use of Vextec's Trade Secrets and other confidential information has also harmed and continues to harm Vextec. For example, in November 2010, Vextec submitted a grant proposal to the Department of Energy SBIR program on "Life and Reliability Prediction for Wind Turbine Gearboxes." Vextec did not win this grant. During the SBIR process, Vextec was informed that it did not win this grant because of the similarity between its proposal and work already being done by Sentient in another SBIR grant. Specifically, the Department of

Energy reviewer noted, “[t]his proposal looks a lot like the work that is currently being done by Sentient under an SBIR grant.” During a de-brief with government employees after the filing of said grant proposal, Vextec was informed that its proposed approach was almost identical to Sentient’s approach. On information and belief, Sentient used Vextec Trade Secrets and Confidential information to obtain its prior SBIR grant and its misappropriation of this information has caused Vextec to lose business opportunities.

37. Vextec is informed and believes that Sentient has obtained Vextec Trade Secrets and other confidential information from the Former Vextec Employees, and used such information and/or Vextec’s patented technology to its benefit in at least the following instances:

A. Sentient Obtained Vextec Trade Secrets and Confidential Information From Mr. Thomas

38. On August 1, 2007, just over one year after Mr. Thomas’s employment with Vextec began, Vextec terminated his employment with Vextec. A true and correct copy of Mr. Thomas’s Employment Termination Agreement is attached hereto as Exhibit 14 (“Thomas Employment Termination Agmt”). That same day, Vextec engaged Mr. Thomas as a consultant. (Sales Consultant Agmt. Exh. 4). Then, less than a year later, on May 1, 2008, before his Sales Consultant Agreement was scheduled to expire, Vextec terminated its relationship with Mr. Thomas through a Separation Agreement and Release of Claims. (Exh. 11).

39. Around the same time that Mr. Thomas’s consulting relationship with Vextec ended, and at least as early as July 2008, Mr. Thomas began a business relationship with Sentient. (Exh. 12). Given his position at Vextec, Mr. Thomas possessed substantial proprietary information concerning current and prospective Vextec customers.

40. On information and belief, Mr. Thomas provided Sentient with Vextec Trade Secrets and other confidential information related to his work at Vextec. Sentient knew or had reason to

know that this information constituted Vextec Trade Secrets and Confidential Information and that it was acquiring this information by improper means. The Vextec Trade Secrets include, but are not limited to, technical data, proposals, marketing information, client contacts, unique know-how and other information relating to Vextec's technology.

41. On information and belief, while working with Sentient, Mr. Thomas recruited Mssrs. Line, Pulikollu, and King and induced them to violate Tennessee law and breach their contractual obligations with Vextec by disclosing Vextec Trade Secrets and Confidential Information.

B. Mr. Thomas Helped Sentient To Obtain Vextec Trade Secrets and Confidential Information From Mr. Line

42. At least as early as July 2008, while Mr. Line was still employed by Vextec, Mr. Line and Mr. Thomas were conspiring to develop business for Sentient for proposals covering the same prognostics and fatigue management technology developed by Vextec. For example, on July 7, 2008 and July 8, 2008 Mr. Line and Mr. Thomas exchanged a series of emails about potential clients for Sentient. (Exh. 12). Vextec was unaware of Mr. Line or Mr. Thomas's work for Sentient at this time.

43. On information and belief Mr. Line used Vextec Trade Secrets and Confidential Information, including, at least proprietary information concerning current and prospective Vextec customers to solicit clients for Sentient. Mr. Line shared Vextec Trade Secrets and Confidential Information regarding Vextec current and prospective customers with Mr. Thomas for the purposes of soliciting clients for Sentient.

44. In November 2008, during the same time period Mr. Thomas and Mr. Line were conspiring to develop business for Sentient, Vextec learned that Mr. Line and Mr. Thomas, were working together and moonlighting by soliciting business from another company called

Mesoscribe. Vextec company representatives met with Mr. Line and reminded him of his confidentiality obligations to Vextec.

45. On or around November 2008, Sentient submitted an SBIR proposal on "Model Updating and Uncertainty Management for Aircraft Prognostic Systems" to NASA and their proposal was funded. On information and belief the work Sentient proposed infringes the '947 patent. Additionally, Sentient's proposal concerned the same type of work done by Mr. Line as an employee of Vextec.

46. On information and belief, Mr. Line shared his knowledge of the '947 patent with Sentient.

47. On information and belief, while still employed at Vextec, Mr. Line provided Sentient and Mr. Thomas with Vextec Trade Secrets and other confidential information related to his work at Vextec. Sentient knew or had reason to know that this information constituted Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient then used Vextec Trade Secrets and other confidential information in its grant proposal. The Vextec Trade Secrets include, but are not limited to, technical data, mathematical formulas, methods and techniques to integrate physics-based damage propagation models with diagnostic measures of current state of health in a mathematically rigorous method for the determination of remaining useful life and to represent the uncertainty associated with both diagnostic state estimation and loading conditions, and the propagation of such uncertainties to the remaining useful life prediction.

48. Just two months later, in mid-January 2009, both Vextec and Sentient submitted Navy SBIR grant proposals on a grant topic "Gearbox Load and Life Simulation Software." The

published abstract of Sentient's proposal is almost identical to Vextec's Proposal. Both Vextec and Sentient were awarded this grant.

49. On information and belief, while still employed at Vextec, Mr. Line supplied Vextec Trade Secrets and other confidential information he learned during the course of his employment to Sentient and Mr. Thomas. Sentient knew or had reason to know that this information constituted Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient then used Vextec Trade Secrets and other confidential information in its grant proposal. The Vextec Trade Secrets include, but are not limited to, technical data, mathematical formulas, methods and techniques to couple finite element analysis with continuum damage mechanics approaches to predict damage accumulation rates in the material microstructure that estimate gearbox life for experienced and anticipated mission profiles.

50. Two weeks after Sentient's Navy SBIR proposal was submitted, on February 2, 2009, Mr. Line informed Vextec's Chief Technology Officer, Robert Tryon, that he wished to retroactively resign from Vextec. Although Mr. Line had not informed anybody at Vextec that he wished to resign until that day, Mr. Line informed Mr. Tryon that he had resigned two weeks earlier. According to Mr. Line, he had been working as a "consultant" for Vextec during those two weeks, notwithstanding the fact that nobody at Vextec had approved of or agreed to any "consulting" relationship. On information and belief, Mr. Line attempted to backdate his resignation because of activities that he had engaged in with Sentient.

51. Vextec notified Mr. Line that his resignation was not effective until February, 2, 2009, the day Vextec was informed of that resignation. Mr. Line's exit interview occurred that

same day. During his exit interview, Mr. Line was reminded of his confidentiality obligations and was provided with a copy of his Confidentiality and Non-Disclosure Agreement.

52. On information and belief and unknown to Vextec at the time, after leaving Vextec, Mr. Line continued working with Sentient.

53. In September 2009, both Sentient and Vextec submitted proposals to the Navy SBIR program "Spline Health Prognosis via Physics Based Modeling Coupled with Component Level Tests." Sentient was awarded the grant. Sentient's proposal, which came after Mr. Line left Vextec, represented a departure from technology previously utilized by Sentient in favor of a proposal focused on Vextec's propriety technology. Indeed, the technology proposed by Sentient is a foundation of Vextec's business and is precisely what Vextec had previously been developing with the Navy.

54. On information and belief, Mr. Line, Mr. Thomas and Sentient used Vextec Trade Secrets and other confidential information in Sentient's proposal and Sentient knowingly benefited from its wrongful use of Vextec Trade Secrets and other confidential information. The Vextec Trade Secrets include, but are not limited to, technical data, mathematical formulas, methods and techniques to develop fretting fatigue analysis software with rigorous consideration of surface roughness effects in the stick/slip phenomena and fatigue.

55. In January 2010, Sentient submitted a Navy SBIR proposal entitled "Prognostic & Health Management Technologies for Unmanned Aerial Vehicles (UAV) Optimized PHM System for Unmanned Aerial Vehicles." Mr. Line performed similar work during his employment at Vextec. On information and belief, Mr. Line supplied Vextec Trade Secrets and other Confidential Information he learned during the course of his employment with Vextec to Sentient and Mr. Thomas. Sentient knew or had reason to know that this information constituted

Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient then used Vextec Trade Secrets and other confidential information in its grant proposal. The Vextec Trade Secrets include, but are not limited to, technical data, mathematical formulas, methods and techniques to apply physics of failure algorithms to provide long time-horizon prediction of component reliability.

56. On information and belief, Mr. Line has continued to disclose Vextec Trade Secrets and other confidential information in his work for Sentient.

C. Sentient Obtained Vextec Trade Secrets and Confidential Information From Mr. Pulikollu

57. Having been awarded a grant involving Vextec technology, Sentient then recruited Raja Pulikollu who was a lead engineer at Vextec. In February 2010, Mr. Pulikollu resigned from Vextec and informed Vextec that he was going to be working with Sentient.

58. In his exit interview, on February 19, 2010, Mr. Pulikollu was provided a copy of his Confidentiality and Non-Disclosure Agreement, was reminded by the Chief Executive Officer of Vextec, Loren Nasser, of his continuing obligations under his Confidentiality and Non-Disclosure Agreement and the potential legal consequences of violating that agreement in light of his new employment with Sentient. (Exh. 9, Raja Pulikollu Exit Review & Checklist).

59. Vextec is informed and believes that Mr. Pulikollu has not complied with his Confidentiality and Non-Disclosure Agreement, and that Mr. Pulikollu has disclosed and continues to disclose Vextec Trade Secrets and other confidential information to Sentient, to the benefit of Sentient, after his separation from Vextec.

60. Around the same time Mr. Pulikollu left Vextec, Sentient was awarded a NASA SBIR grant for "Enhanced Prediction of Gear Tooth Surface Fatigue Life." The technology highlighted in the Sentient NASA SBIR abstract is similar or identical to Vextec proprietary

technology worked on and/or developed by Mr. Pulikollu while he was at Vextec. On information and belief, Mr. Pulikollu and/or Mr. Line used Vextec Trade Secrets and other confidential information in Sentient's proposal for and work on its NASA SBIR Grant. Sentient knew or had reason to know that this information constituted Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient used Vextec Trade Secrets and other confidential information in its grant proposal to compete with Vextec. The Vextec Trade Secrets include, but are not limited to, technical data, mathematical formulas, methods and techniques to develop software that uses design parameters of a gearbox along with a mission load spectrum coupled with damage accumulation algorithms that take into account fatigue initiation at the level of the material microstructure to estimate current gearbox health and remaining life.

61. In September 2010, Vextec and Sentient both submitted proposals to the Army SBIR program for "Fatigue Crack Initiation Prediction Tool for Rotorcraft Spiral Bevel Gears." Sentient was awarded this grant. The technology described in Sentient's proposal abstract is the same technology that Mr. Pulikollu had been developing for Vextec. On information and belief, the work proposed by Sentient infringes Vextec's '825 patent. On information and belief, Mr. Pulikollu shared his knowledge of Vextec's patent with Sentient.

62. On information and belief, Mr. Pulikollu also supplied Vextec Trade Secrets and other confidential information he learned during the course of his employment with Vextec to Sentient. Sentient knew or had reason to know that this information constituted Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient used Vextec Trade Secrets and other confidential information in its grant proposal to compete with Vextec. The Vextec Trade Secrets and confidential information

FILED

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

2011 OCT 28 PM 3:39

**U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN**

VEXTEC CORPORATION,

Plaintiff,

v.

**SENTIENT CORPORATION; WARD
THOMAS; KEVIN LINE; RAJA
PULIKOLLU; and MATTHEW KING,**

Defendants.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

Sentient Corporation ("Sentient"), is willfully violating Vextec Corporation's ("Vextec") intellectual property rights. Sentient hired away Vextec employees and is exploiting their knowledge to infringe Vextec patents, misappropriate Vextec trade secrets and unfairly compete with Vextec. Sentient is also infringing Vextec's trademark rights through its use of the mark DigitalTwin. Accordingly, Vextec files this suit for patent infringement under 35 U.S.C. §§ 271, et. seq., trademark infringement under 15 U.S.C. §§ 1114 and 1125, and for numerous violations of Tennessee law.

Vextec previously employed Kevin Line, Raja Pulikollu, Matthew King and Ward Thomas (collectively "Former Vextec Employees"). In addition, Vextec engaged Mr. Thomas as a consultant after his employment relationship ended. By virtue of their employment with Vextec, the Former Vextec Employees were provided with confidential and proprietary information relating to Vextec's business practices and strategies, including, but not limited to, technical data, mathematical formulas, methods and techniques to couple finite element analysis with continuum damage mechanics approaches to predict damage accumulation rates, and the

include technical data, mathematical formulas, methods and techniques to develop a probabilistic fatigue crack initiation prediction tool using finite element methods, microstructure models, and probabilistic physics-based fatigue damage methods to predict the influence of the variation in manufacturing processes (carburization, shot peening), and material macro and microstructural properties on gear fatigue life.

63. On information and belief, Mr. Pulikollu has continued to disclose Vextec Trade Secrets and other confidential information in his work for Sentient.

D. Sentient Obtained Vextec Trade Secrets and Confidential Information from Mr. King

64. In November 2010, Mr. King resigned from Vextec. Although he informed Vextec when he resigned that he was not going to work for Sentient, he began employment with Sentient shortly after departing his employ with Vextec.

65. In his exit interview, on November 12, 2010, Mr. King was provided a copy of his Confidentiality and Non-Disclosure Agreement and reminded of his continuing obligations under his Confidentiality and Non-Disclosure Agreement. (Exh. 10, Matthew King Exit Review & Checklist).

66. On information and belief, in violation of his Confidentiality and Non-Disclosure Agreement, Mr. King provided Sentient with information relating to Vextec's Army SBIR proposal for the program "Fatigue Crack Initiation Prediction Tool for Rotorcraft Spiral Bevel Gears" while still in Vextec's employ. Vextec's proposal, which Mr. King worked on while an employee of Vextec, contained Vextec Trade Secrets and other confidential information. Additionally, on information and belief, the work proposed by Sentient infringes Vextec's '825 patent. Given the timing of Mr. King's hiring by Sentient, he was undoubtedly speaking with Sentient personnel at the time Vextec was preparing this SBIR proposal. Sentient knew or had

reason to know that this information constituted Vextec Trade Secrets and confidential information and that it was acquiring this information by improper means. Sentient then used Vextec Trade Secrets, other confidential information, and patented technology in its grant proposal to compete with Vextec. The Vextec Trade Secrets and confidential information include technical data, mathematical formulas, methods and techniques to develop a probabilistic fatigue crack initiation prediction tool using finite element methods, microstructure models, and probabilistic physics-based fatigue damage methods to predict the influence of the variation in manufacturing processes (carburization, shot peening), and material macro and microstructural properties on gear fatigue life.

67. On information and belief, Mr. King has continued to disclose Vextec Trade Secrets and other confidential information in his work for Sentient.

III. Sentient's Infringement of Vextec's Virtual Twin[®] Mark

68. Having hired away Vextec's employees, misappropriated Vextec's trade secrets, and infringed Vextec's patents, Sentient is now violating Vextec's Trademark rights, as well.

69. Vextec has expended a significant amount of resources to develop a market presence, including widely and prominently advertising and using the Virtual Twin[®] mark in all manner of commercial traffic and has built up substantial goodwill in its Virtual Twin[®] mark. For example, Vextec uses the Virtual Twin[®] mark prominently on its website and marketing its services and software under the Virtual Twin[®] mark.

70. Vextec owns U.S. Trademark Registration No. 3,926,714 for "business data analysis services, namely analyzing data and predicting material failure and product reliability for business profitability purposes, business data analysis relating to long-term product warranty costs and corporate profitability," a true and correct copy is attached hereto as Exhibit 15.

71. Despite Vextec's long-established rights in its Virtual Twin[®] mark and well after Vextec established those rights Sentient commenced its use of the mark "DigitalTwin" for identical services.

72. The similarity between these two marks have been noted by customers. For example, reviewing Vextec's 2011 SBIR/STTR proposal for "Life and Reliability Prediction for Wind Turbine Gearboxes" the Department of Energy reviewer remarked on the similarity of Vextec's and Sentient's products and noted "[e]ven similarity of the terminology "virtual twin" used by Vextec vs. "digital twin" used by Sentient is striking." See Exhibit 16, a true and correct copy of the 2011 Review Form For SBIR/STTR Phase I Grant Application Titled "Life and Reliability Prediction for Wind Turbine Gearboxes" propped by Vextec.

73. On June 9, 2011, Vextec sent a cease and desist letter to Sentient demanding that Sentient cease all use of the mark "DigitalTwin."

74. On July 14, 2011, Sentient's counsel sent Vextec a letter improperly denying use, and alternatively arguing its right to use its DigitalTwin mark in the future.

75. Despite Sentient's denial that it uses the mark DigitalTwin, an online profile of Sentient printed on July 18, 2011, a true and correct copy of which is attached hereto as Exhibit 17, confirms Sentient's use of its DigitalTwin mark in connection with its marketing to commercial uses.

76. Sentient's actions are knowing willful and deliberate and done with intent to trade off the goodwill and reputation of Vextec's mark.

**COUNT I – INFRINGEMENT OF THE '947 PATENT
(Against Sentient)**

77. Vextec incorporates by reference its allegations in Paragraphs 1 through 76 as if fully restated in this paragraph.

78. Plaintiff Vextec is the assignee of and the owner of all right, title and interest to the '947 patent. Vextec has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

79. Sentient has been infringing and continues to infringe one or more of the claims of the '947 patent through at least the acts of making, using, selling, offering for sale and/or importing infringing products, methods, process, systems, and/or services. Sentient's infringement includes, without limitation, Sentient's model updating and uncertainty management for aircraft prognostic systems. Sentient has indirectly infringed the '947 patent by inducing the infringement of the '947 patent and contributing to the infringement of the '947 patent. Sentient has actively and knowingly induced infringement of the '947 patent by providing its customers and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its products and services that promote and demonstrate how to use its products and services in an infringing manner, and upon information and belief, those customers and others have used Sentient's products and services in an infringing manner. Sentient has also knowingly contributed to infringement by others such as customers, within the meaning of 35 U.S.C. § 271(c).

80. Sentient's wrongful conduct has caused Vextec to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions. On information and belief, Sentient will continue these infringing acts unless enjoined by this Court.

COUNT II – INFRINGEMENT OF THE '825 PATENT

81. Vextec incorporates by reference its allegations in Paragraphs 1 through 80 as if fully restated in this paragraph.

82. Vextec is the assignee of and the owner of all right, title and interest to the '825 patent. Vextec has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

83. Sentient has been infringing and continues to infringe one or more of the claims of the '825 patent through at least the acts of making, using, selling, offering for sale and/or importing infringing products, methods, process, systems, and/or services. Sentient's infringement includes, without limitation, its fatigue crack initiation prediction tool for rotorcraft spiral bevel gears. Sentient has indirectly infringed the '825 patent by inducing the infringement of the '825 patent and contributing to the infringement of the '825 patent. Sentient has actively and knowingly induced infringement of the '825 patent by providing its customers and others with detailed explanations, instructions, information, and support services related to arrangements, applications, and uses of its products and services that promote and demonstrate how to use its products and services in an infringing manner, and upon information and belief, those customers and others have used the products and services in an infringing manner. Sentient has also knowingly contributed to infringement by others such as customers, within the meaning of 35 U.S.C. § 271(c).

84. Sentient' wrongful conduct has caused Vextec to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions. On information and belief, Sentient will continue these infringing acts unless enjoined by this Court.

COUNT III – WILLFULNESS

85. Vextec hereby realleges and incorporates by reference the allegations of paragraphs 1 through 84 of its Complaint.

86. Vextec alleges upon information and belief that, as of the date of the filing of this Complaint, Sentient knowingly or with reckless disregard willfully infringed the '947 and '825 patents. On information and belief, the Former Vextec Employees, who are now part of Sentient, are aware of these patents as a result of their past work with Vextec. Sentient acted despite an objectively high likelihood that its actions constituted infringement of Vextec's valid patent rights.

87. This objectively-defined risk was either known or so obvious that it should have been known to Sentient. Vextec further alleges that Sentient will continue to willfully infringe the '947 patent and the '825 patent subsequent to the filing of this Complaint unless enjoined by this Court. Vextec seeks enhanced damages pursuant to 35 U.S.C. § 284.

COUNT IV - TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, PASSING OFF AND UNFAIR COMPETITION UNDER THE LANHAM ACT (15 U.S.C. §§ 1114, 1125) (Against Sentient)

88. Vextec incorporates by reference the allegations contained in Paragraphs 1 through 87 of its Complaint.

89. Vextec owns U.S. Trademark Registration No. 3,926,714 for Virtual Twin.

90. Vextec owns common law (unregistered) trademarks for Virtual Twin.

91. Vextec's Virtual Twin Trademarks, including its common law trademarks, are distinctive and were so prior to Defendant's acts complained of in this Complaint.

92. Sentient's unauthorized use of "DigitalTwin," for the same product that Vextec's Virtual Twin[®] trademark is used, is likely to cause confusion, or to cause mistake or to deceive

as to the origin, sponsorship, or approval of Defendants, their products, and/or commercial activities by or with Vextec, and thus constitutes trademark infringement, false designation of origin, passing off and unfair competition in violation of the Lanham Act.

93. Sentient's acts constitute knowing, deliberate and willful infringement of Plaintiff's registered Virtual Twin® mark and render this case an "exceptional case" under 15 U.S.C. § 1117(a).

94. As a direct and proximate result of Sentient's wrongful conduct, Sentient has caused Vextec irreparable harm and injury.

**COUNT V - COMMON-LAW TRADEMARK INFRINGEMENT
(Against Sentient)**

95. Vextec incorporates by reference the allegations contained in Paragraphs 1 through 94 of its Complaint.

96. Sentient's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Sentient with Vextec, or as to the origin, sponsorship, or approval of Sentient, their products, and their commercial activities by or with Vextec such that Sentient's acts constitute infringement of Vextec's proprietary rights in the Vextec Mark and misappropriation of Vextec's goodwill in that mark, under Tennessee common law.

**COUNT VI -UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER THE
TENNESSEE CONSUMER PROTECTION ACT
(Against Sentient)**

97. Vextec incorporates by reference the allegations contained in Paragraphs 1 through 96 of its Complaint.

98. Sentient's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Sentient, their products,

and/or their commercial activities by or with Vextec, and thus constitute unfair or deceptive practices in violation of the Tennessee Consumer Protection Act that has damaged Vextec. Tenn. Code Ann. § 47-18-104.

99. Due to Defendants' violation of the Tennessee Consumer Protection Act, Vextec should be awarded its reasonable attorney's fees and costs. Tenn. Code Ann. § 47-18-109(e).

100. Moreover, because Defendants' unfair and deceptive practices have been engaged in willfully and knowingly, Vextec seeks treble the actual damages sustained. Tenn. Code Ann. § 47-18-109(a)(3).

**COUNT VII - UNFAIR COMPETITION AND TORTIOUS INTERFERENCE WITH
BUSINESS RELATIONS
(Against All Defendants)**

101. Vextec hereby realleges and incorporates by reference the allegations of paragraphs 1 through 100 of its Complaint.

102. Sentient's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Sentient with Vextec, or as to the origin, sponsorship, or approval of Sentient, their products, and their commercial activities by or with Vextec such that Sentient's acts constitute unfair competition under Tennessee common law.

103. Mr. Thomas and Mr. Line unfairly competed with Vextec and tortiously interred with Vextec's business relations by using their knowledge of Vextec customers to take business away from Vextec for the benefit of Sentient and/or Torii.

104. Mr. Thomas and Mr. Line also unfairly competed with Vextec and tortiously interfered with Vextec's business relations by holding themselves out to Vextec customers and others as affiliated with Vextec, when in fact they were working for Sentient and/or Torii, therefore improperly using Vextec's goodwill for the benefit of Sentient and Torii.

105. Defendants have unfairly competed with Vextec by wrongfully acquiring Vextec Trade Secrets and confidential information and by using and disclosing Vextec confidential information in marketing competing products, including by applying for SBIR and STTR grants.

106. By reason of these actions, Vextec has been and will continue to suffer irreparable harm.

107. Such unfair competition and interference with Vextec's business relations cannot be compensated by monetary damages alone.

108. Unless Defendants are enjoined from their unfair competition and tortious interference, Vextec will suffer great and irreparable harm.

**COUNT VIII - MISAPPROPRIATION OF TRADE SECRETS
(Against All Defendants)**

109. Vextec hereby realleges and incorporates by reference the allegations of paragraphs 1 through 108 of its Complaint.

110. Under Tennessee law, "misappropriation" of a trade secret means:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that that person's knowledge of the trade secret was:

(a) Derived from or through a person who had utilized improper means to acquire it;

(b) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(c) Derived from or through a person who owed a

duty to the person seeking relief to maintain its secrecy or limit its use ...

Tenn. Code Ann. § 47-25-1702.

111. Former Vextec Employees have misappropriated Vextec Trade Secrets in violation of their Agreements with Vextec and Tennessee law.

112. Sentient has misappropriated Vextec Trade Secrets in violation of Tennessee law.

113. Vextec is entitled to an injunction against the Defendants preventing them from continuing to misappropriate Vextec's Trade Secrets. Tenn. Code Ann. § 47-25-1703.

114. In addition to an injunction, Vextec is entitled to recover the actual loss caused by Defendants' misappropriation and any unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. Tenn. Code Ann. § 47-25-1704.

115. In lieu of the damages described in the preceding paragraph, Vextec is entitled to recover a reasonable royalty for Defendants' unauthorized disclosure or use of Vextec Trade Secrets. Tenn. Code Ann. § 47-25-1704.

116. Moreover, because Defendants' misappropriation of Vextec Trade Secrets is willful and malicious, Vextec is entitled to an award of exemplary/enhanced damages and attorney's fees. Tenn. Code Ann. § 47-25-1704(b) and Tenn. Code Ann. § 47-25-1705.

117. Defendants' misappropriation is causing great and irreparable harm to Vextec.

118. Such damage will continue to occur unless Defendants are enjoined from further disclosure, misappropriation, and/or use of Vextec Trade Secrets.

COUNT IX - BREACH OF CONTRACT (Against Former Vextec Employees)

119. Vextec hereby realleges and incorporates by reference the allegations of paragraphs 1 through 118 of its Complaint.

identification of current and prospective Vextec customers. As part of their employment and consulting arrangements, the Former Vextec Employees agreed to restrictions regarding to whom they could disclose confidential information acquired while working for Vextec. Mr. Thomas left Vextec and eventually became the President of Sentient Corporation, a direct competitor of Vextec. Sentient then hired the other Former Vextec Employees away from Vextec. In the course of their work for Sentient, the Former Vextec Employees have unlawfully used Vextec patented technology and divulged Vextec's trade secrets and other confidential information in violation of both of their Agreements with Vextec and Tennessee law. Sentient has used Vextec's patented technology, trade secrets and confidential information to compete with Vextec. Accordingly, Vextec hereby sues the Former Vextec Employees for, among other things, misappropriation of trade secrets and breach of contract and Sentient for, among other things, willful patent infringement, trademark infringement and misappropriation of trade secrets.

PARTIES AND PATENTS

1. Vextec Corporation is a Delaware Corporation with its principal place of business at 750 Old Hickory Blvd # 270, Brentwood, Tennessee 37027-4541. Vextec creates software that assists aerospace, automotive, electronics, energy, heavy equipment industry and medical device companies in predicting the life expectancy of their manufactured parts. In 2009 Forbes Magazine lauded Vextec as America's most promising company predicting that its Virtual Life Management Product for forecasting failure will hasten the pace of innovation.

2. Vextec owns all right, title, and interest in, and has standing to sue for infringement of the following: United States Patent No. 7,006,947, issued on February 28, 2006 for a "Method and Apparatus For Predicting Failure in a System" (the "'947 patent"), a true and correct copy of which is attached hereto as Exhibit 1; and United States Patent No. 7,016,825, issued on March

120. The Former Employees Confidentiality and Non-Disclosure Agreements are valid and enforceable contracts.

121. In breach of their Confidentiality and Non-Disclosure Agreements, the Former Vextec Employees have failed to maintain the confidentiality of Vextec Trade Secrets and confidential information. (*See* Exhs. 3, 5-7 at para. 1 and 2).

122. In breach of his Sales Consultant Agreement, Mr. Thomas failed to maintain confidentiality of Vextec Trade Secrets and confidential information (*See* Exh. 4 at Para. 4(a)).

123. Vextec has been and continues to be greatly and irreparably harmed by the Former Vextec Employees' breaches of contract.

124. Such harm will continue unless and until the Former Vextec Employees are restrained by this Court.

**COUNT X - Procurement of Breach of Contract
(Against Sentient)**

125. Vextec realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 124 of this Complaint.

126. A legal enforceable contract existed as between Vextec and each of the Former Vextec Employees.

127. Sentient knew of each of the Former Vextec Employees' contracts with Vextec and the prohibitions contained therein.

128. Sentient intended to induce (and intends to continue to induce) each of the Former Vextec Employees to breach his agreement with Vextec.

129. In taking actions that induced the breach (and which continue to induce the breach) of each Former Vextec Employees' agreements with Vextec, Sentient has acted recklessly and/or maliciously with regard to the rights of Vextec.

130. The contracts between Vextec and each of the Former Vextec Employees were, in fact, breached (and continue to be breached) and the inducement by Sentient was and continues to be the proximate cause for each such breach.

131. Vextec has been and continues to be greatly and irreparably injured by the Former Vextec Employees' breaches of contract and is entitled to enhanced damages and attorney's fees. Tenn. Code Ann. § 47-50-109.

**COUNT XI - Procurement of Breach of Contract
(Against Mr. Thomas)**

132. Vextec realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 131 of this Complaint.

133. A legal enforceable contract existed as between Vextec and each of the Former Vextec Employees.

134. Mr. Thomas knew of each of the other Former Vextec Employees' contract with Vextec and the prohibitions contained therein.

135. Mr. Thomas intended to induce (and intends to continue to induce) each of the other Former Vextec Employees to breach his agreement with Vextec.

136. In taking actions that induced the breach (and which continue to induce the breach) of each of the other Former Vextec Employees' agreements with Vextec, Mr. Thomas has acted recklessly and/or maliciously with regard to the rights of Vextec.

137. The contracts between Vextec and each of the other Former Vextec Employees were, in fact, breached (and continue to be breached) and the inducement by Mr. Thomas was and continues to be the proximate cause for each such breach.

138. Vextec has been and continues to be greatly and irreparably injured by the Former Vextec Employees' breaches of contract and is entitled to enhanced damages and attorney's fees. Tenn. Code Ann. § 47-50-109.

**Count XII - Breach of Employees' Duty of Loyalty
(Against Mr. Line and Mr. King)**

139. Vextec realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 138 of this Complaint.

140. Msrs. Line and King owed Vextec duties to perform their employment in good faith and in loyalty to Vextec.

141. As employees of Vextec, Mr. Line and Mr. King had been given the trust and confidence to have access in the scope of their employment to Vextec Trade Secrets and other information. Msrs. Line and King had a duty of loyalty to Vextec and a duty to maintain Vextec's confidential information.

142. Vextec is informed and believes, and on that basis alleges, that Msrs. Line and King breached their duty of loyalty to Vextec while they were still employed by Vextec by disclosing Vextec Trade Secrets and other confidential information to Sentient, including, but not necessarily limited to, Vextec SBIR proposals for Sentient's benefit in its competition with Vextec.

143. As a consequence of their disloyal acts, Msrs. Line and King did not act in the best interest of Vextec while still employed by Vextec and still receiving compensation from Vextec.

144. Vextec has been damaged by Msrs. Line and King's breaches of their duties of loyalty.

COUNT XIII - UNJUST ENRICHMENT
(Against Sentient)

145. Vextec hereby realleges and incorporates by reference the allegations of paragraphs 1 through 144 of its Complaint.

146. Sentient's willful and wrongful use of Vextec's confidential information provide Sentient with an unfair competitive advantage and the use of Vextec's property without having incurred the expense and time for research, development, commercialization, and marketing techniques to develop Vextec's confidential information.

147. As a direct result of Sentient's unlawful acquisition and use of Vextec confidential information, Sentient has been unjustly enriched to the detriment of Vextec.

148. Unless Sentient is restrained and enjoined from the wrongful disclosure and use of Vextec Trade Secrets and confidential information, Vextec will suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, as to Counts I through XIII Vextec prays that:

- a. This Court enter a judgment for Vextec and against Defendants on all counts of Vextec's Complaint;
- b. This Court adjudge and decree that the Sentient has infringed, contributorily infringed and induced infringement of the '947 patent;
- c. This Court adjudge and decree that the Sentient has infringed, contributorily infringed and induced infringement of the '825 patent;
- d. This Court enter judgment that Sentient knowingly and willfully engaged in such infringement;
- e. This Court preliminarily and permanently enjoin Sentient, their parents, subsidiaries, affiliates, agents, servants, employees, attorneys, representatives, successors and assigns, and all others in active concert or participation with them from infringing the Patents-in-Suit;
- f. This Court order an accounting to determine the damages to be awarded to Vextec

as a result of Sentient's infringement, including sales not presented at trial and award additional damages for any such infringing sales;

- g. This Court order an award to Vextec of such damages as it shall prove at trial against Defendants that are adequate to compensate Vextec for Sentient's infringement, said damages to be no less than a reasonable royalty together with interest and costs;
- h. This Court order an award to Vextec of enhanced damages of up to three times the amount of compensatory damages because of Defendants' willful infringement;
- i. This Court assess pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;
- j. This Court render a finding that this case is "exceptional" and award to Vextec its costs and reasonable attorneys' fees, as provided by 35 U.S.C. § 285;
- k. This Court preliminarily and permanently enjoin Sentient, its employees, owners, agents, officers, directors, attorneys, representatives, affiliates, subsidiaries, and successors and assigns, and all those in active concert or having knowledge of the causes of action, from using Vextec's Virtual Twin Trademark, alone or in combination with any other word(s), term(s), designation(s), mark(s), and or design(s), as well as all confusingly similar marks, including "Digital Twin;"
- l. Awarding Plaintiff enhanced actual damages and an enhanced accounting of Defendant's profits from its acts of trademark infringement and unfair competition, together with pre-judgment interest, pursuant to 15 U.S.C. § 1117 and state law;
- m. Awarding Plaintiff reasonable attorney's fees and costs, pursuant to 15 U.S.C. § 1117;
- n. Mr. Thomas, the Former Vextec Employees and Sentient, and its officers, directors, agents, servants, employees, attorneys, successors and assigns, related companies, and all others holding by or through them, or controlled by them, or controlling them, or acting in privity or in concert with them, be preliminarily and permanently enjoined from:
 - (1) use and/or disclosure or dissemination, in any manner, of Vextec Trade Secrets and confidential information;
 - (2) engaging in or inducing any act in breach of the Former Vextec Employees Confidentiality and Non-Disclosure Agreements;
 - (3) engaging in or inducing any act calculated to, likely to, or tending to unfairly compete with Vextec; and

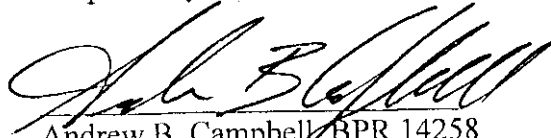
- (4) hiring Vextec employees having knowledge of Vextec Trade Secrets and confidential information for the purpose of obtaining further information or further competing unfairly with Vextec.
- o. Defendants be ordered to immediately deliver to Vextec all materials and things embodying Vextec Trade Secrets and confidential information and that a designated representative of Vextec be permitted to inspect Sentient's premises upon reasonable notice to ensure the return of Vextec's property;
- p. Defendants be required to account for and pay all damages suffered by Vextec;
- q. Sentient be required to pay damages based on its unjust enrichment at Vextec's expense;
- r. Defendants be required to pay such exemplary or punitive damages based on its state law claims that this Court deems just and proper;
- s. Defendants be required to pay for the cost of this action, including Vextec's reasonable attorneys' fees; and
- t. Awarding Plaintiff such other relief, in law or in equity, which the Court deems just and proper.

JURY DEMAND

Vextec hereby requests a trial by jury.

Dated: October 28, 2011

Respectfully Submitted,



Andrew B. Campbell, BPR 14258

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21, 2006 for a “Method and Apparatus For Predicting the Failure of a Component” (the “’825 patent”), a true and correct copy of which is attached hereto as Exhibit 2.

3. Ward Thomas is a former employee of and consultant to Vextec who currently is a citizen of New York residing at 781 Van Rensselaer Avenue, Niagara Falls, New York 14305. Mr. Thomas worked for Vextec under a Confidentiality and Non-Disclosure Agreement dated July 14, 2006. Mr. Thomas is currently the president of Sentient, affiliates himself with Sentient and, on information and belief, is also a shareholder of Sentient.

4. Kevin Line is a former employee of Vextec who currently is a citizen of Tennessee residing at 5116 Ashley Drive, Nashville, Tennessee 37211. Mr. Line worked for Vextec under a Confidentiality and Non-Disclosure Agreement dated April 10, 2005¹, and he currently works for Sentient.

5. Raja Pulikollu is a former employee of Vextec who currently is a citizen of India residing in Tennessee at 109 Honey Creek Ln Nashville, Tennessee 37211. Mr. Pulikollu worked for Vextec under a Confidentiality and Non-Disclosure Agreement dated August 16, 2005, and he currently works for Sentient.

6. Matthew King is a former employee of Vextec who currently is a citizen of Tennessee residing at 2715 Eastland Avenue, Nashville, Tennessee 37206. Mr. King worked for Vextec under a Confidentiality and Non-Disclosure Agreement dated January 1, 2007, and he currently works for Sentient.

7. Sentient Corporation is an Idaho Corporation. with its principal place of business located at 850 Energy Drive, Suite 307, Idaho Falls, Idaho 83401. Sentient directly competes with Vextec.

¹ Mr. Line’s Confidentiality and Non-Disclosure Agreement is dated April, 10, 2005. However, other Vextec documents confirm that Mr. Line’s began his employment with Vextec on April 10, 2006. It appears that “2005” was inadvertently not changed to “2006” when the agreement was signed.

JURISDICTION AND VENUE

8. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This court also has supplemental jurisdiction of the state law claims under 28 U.S.C. § 1367 because they are so related to the federal patent and trademark claims that they form part of the same case or controversy.

10. The Defendants are subject to personal jurisdiction in the State of Tennessee because they reside in this judicial district and division and/or they regularly transact business in this judicial district and division by, among other things, offering their products and services to the federal government, customers, business affiliates and/or partners located in this judicial district and division. In addition, a substantial part of the events giving rise to this claim occurred in this judicial district and division, including acts of direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of one or more of the Patents-in-Suit in this judicial district and division.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400(b) because the Defendants are subject to personal jurisdiction in this district, and a substantial part of the events giving rise to this claim occurred in this judicial district and division, including acts of infringement.

FACTUAL BACKGROUND

I. Access of The Vextec Former Employees to Vextec Patented Technology, Trade Secrets and Their Contractual Confidentiality Obligations

12. Mr. Thomas was employed by Vextec as a Vice President of Software Sales from 2006 through 2007 and was a consultant to Vextec from 2007 through 2008. In consideration of his employment Mr. Thomas entered into a Confidentiality and Non-Disclosure Agreement with

Vextec, a true and correct copy of which is attached hereto as Exhibit 3, ("Thomas Confidentiality & Non-Disclosure Agmt."). Mr. Thomas's Sales Consultant Agreement, a true and correct copy of which is attached hereto as Exhibit 4 ("Thomas Sales Consultant Agmt.") also prevented unauthorized disclosure of Vextec's confidential information and required that he "refrain from using Confidential Information for the advancement of any personal interests, including promotion of the interest of any future employer." Exh. 4, at para. 4 (a).

13. Mr. Line was employed by Vextec as a Program Manager from 2006 through 2009. In consideration of his employment with Vextec, on April 10, 2006, Mr. Line entered into a Confidentiality and Non-Disclosure Agreement with Vextec, a true and correct copy of which is attached hereto as Exhibit 5 ("Line Confidentiality & Non-Disclosure Agmt.").

14. Mr. Pulikollu was employed by Vextec as a Project Engineer and Manager from 2005 through 2010. In consideration of his employment with Vextec, on August 16, 2005, Mr. Pulikollu entered into a Confidentiality and Non-Disclosure Agreement with Vextec, a true and correct copy of which is attached hereto as Exhibit 6 ("Pulikollu Confidentiality & Non-Disclosure Agmt.").

15. Mr. King was employed by Vextec as a Project Engineer and Manager from 2007 through 2010. In consideration of his employment with Vextec, on January 1, 2007, Mr. King entered into a Confidentiality and Non-Disclosure Agreement with Vextec, a true and correct copy of which is attached hereto as Exhibit 7 ("King Confidentiality & Non-Disclosure Agmt.").

16. On information and belief, while working for Vextec, the Former Vextec Employees learned of the '947 and '825 patents and became familiar with Vextec's patented technology.

17. While working for Vextec, the Former Vextec Employees also acquired confidential information and trade secrets, including, but not limited to technical data, proposals, marketing

information, client contacts, unique know-how and other information relating to Vextec's technology ("Vextec Trade Secrets"). Vextec's technology uniquely simulates the life expectancy of a manufactured component. The technology then combines that information with data from other components in a product to predict the product's overall reliability. Premature product failures in the U.S. cost between \$30 and \$40 billion annually in warranty payouts. Just as the mapping of DNA is changing how drugs are launched into the marketplace, Vextec's technology improves every aspect of a product's lifecycle, from design to maintenance, for components built or manufactured by innovative manufacturing companies in the aerospace, industrial equipment, energy, medical implant, and electronic industry segments. In 2009, Forbes magazine named Vextec America's most promising young company, based substantially on the commercial potential of its innovative technology.

18. Vextec Trade Secrets derive independent, actual and potential commercial value from not being generally known to, and not being readily ascertainable through proper means by, other persons, who like Sentient, can obtain economic value from their disclosure or use. Specifically, Vextec Trade Secrets provide Vextec economic benefit by uniquely allowing a customer to predict the durability, performance and lifetime cost of machine parts by simulating the behavior of their component materials. By applying computational analytics to the manufacturing process in a manner protected by Vextec's trade secrets, the company is able to provide customers with a valuable tool that will save substantial time and money in the design and manufacturing process.

19. Vextec Trade Secrets are subject to reasonable efforts by Vextec to maintain secrecy, including, but not limited to, requiring employees to sign confidentiality and non-disclosure agreements, reminding employees of confidentiality obligations during out-processing from

employment, use of a secure internal document filing system, protection of proprietary source code, and password protection on files and computers.

20. In consideration of their employment with Vextec, and all compensation and benefits provided by Vextec, the sufficiency of which was specifically acknowledged, the Vextec Former Employees entered into Confidentiality and Non-Disclosure Agreements with Vextec. Exhs. 3, 5-7.

21. The Vextec Former Employees' Confidentiality and Non-Disclosure Agreements require them to maintain Vextec Trade Secrets and other confidential information in the strictest confidence during and after their employment with Vextec. Specifically, Paragraphs 1 and 2 state:

1. Employee hereby agrees and acknowledges that he has had and shall have access to, or is aware of, certain confidential, restricted and/or proprietary information concerning the Company and/or its affiliates. Employee hereby undertakes and agrees that he shall have a duty to the Company to protect such information from use by or disclosure to third parties.
2. Employee agrees, during and after the term hereof, not to, directly or indirectly, use, divulge, disclose or make accessible to any person, partnership, corporation, or other entity, or appropriate for his or her own use, or the use of any other person, partnership, corporation or other entity, any information, data, figures, sales information, customer lists, tax records, information relating to Company's business, operations, concepts, products or services, personnel history, patents or other intellectual property and accounting procedures concerning Company that are not generally available to the public. Employee agrees to maintain all information in strictest confidence and acknowledges and agrees that such information shall remain the sole and absolute property of the Company, and that upon the request of the Company, all copies thereof and all notes and summaries thereof prepared by either the Company or the Employee shall be returned promptly to the Company. Employee hereby agrees not to release any such confidential information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of an Officer of the Company or as required by relevant principals of law or the order of a Court of competent jurisdiction. Company shall be entitled to an injunction issued by any competent court to enjoin and restrain the unauthorized disclosure of such information.

(Exhs. 3, 5-7, para. 1 and 2).

22. Vextec and the Former Vextec Employees contemplated that Vextec might have the need to resort to litigation to protect the confidentiality of Vextec's confidential and proprietary information, and accounted for such contingency in the Confidentiality and Non-Disclosure Agreement. Specifically, Paragraph 5 states:

5. Remedies. Employee understands and acknowledges that if he/she violates this Agreement, Company will suffer immediate and irreparable harm; therefore, Company will be entitled to obtain injunctive relief, including an order prohibiting violations of this Agreement. The foregoing in no way limits the right of Company to obtain any other remedy at law or in equity to which it may be entitled, including but not limited to damages. In any legal proceeding in which company obtains injunctive or other equitable relief or damages against Employee arising out of his/her violation of this Agreement, Company shall be entitled to recover from Employee its reasonable attorneys fees and costs to the extent approved by the court. The failure by Company to insist on Employee's compliance with this Agreement or to enforce it in any particular circumstance will not constitute a waiver by Company of its right to seek relief for any other or subsequent breach of this Agreement.

(Exhs. 3, 5-7, para. 5).

23. Prior to leaving Vextec, Mssrs. Line, Pulikollu, and King reviewed their Confidentiality and Non-Disclosure Agreements and received copies, true and correct copies of which are attached hereto as Exhibits 8-10 ("Former Vextec Employees' Exit Review & Checklists").

24. Mr. Thomas's Sales Consultant Agreement also requires him to maintain Vextec Trade Secrets and other confidential information in the strictest confidence during and after his consultant relationship with Vextec. Specifically, Paragraph 4 (a) states:

4. Confidentiality; Ownership of Work Product.

a. Consultant acknowledges that as a consultant to the Company he will have access to confidential information of the Company and information of others which the Company has agreed to maintain in confidence including, but not limited to, matters of business or technical nature, such as pricing data and methods, surveys, propriety processes, research projects, inventions, current and future products, computer programs, customer and vendor lists, projections, performance information, business and marketing strategic plans, financial statements and data, and other information of similar nature to